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Summary record of the 2532nd meeting
Held at Headquarters, New York, on Tuesday, 1 April 2008, at 3 p.m.

Chairman: Mr. Rivas Posada

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08-29114 (E)

The meeting was called to order at 3.05 p.m.

General comments of the Committee

Draft general comment on the obligations of States parties under the Optional Protocol to the Covenant (CCPR/C/GC/33/CRP.1)

1. **Mr. Shearer** (Rapporteur for draft general comment No. 33) said that the subject was especially relevant because — despite so much literature about the force of the Committee's Views on communications — some States had come to regard the Views purely as recommendations or had even ignored them altogether.

2. He had been fairly sparing in the use of footnotes, which were in fact not strictly necessary but could be informative about the sources which he had used or which supported the proposals he had made. The footnotes could, of course, be expanded.

3. **The Chairperson** invited the members of the Committee to make general comments on the draft, which indeed filled a serious lacuna.

4. **Mr. Kälin** commended Mr. Shearer for producing a substantial, thoughtful and elegant draft that identified the obligations of States parties well and in a very concise way. He saw, however, one small gap: the obligation of States parties not to hinder access to the Committee by the authors of communications.

5. **Mr. Amor** said that the draft was very well written but in his view too concise, and that it could have drawn more on the Committee's especially rich jurisprudence in the matter. It might enlighten States parties, for instance, to learn more about the Committee's procedure in the consideration of individual communications. Since the general comment would be an important text with real, practical effects, the draft could use some development.

6. **Ms. Chanet**, welcoming a text on a much-needed topic, said that she did not think it should be expanded; she preferred a text that synthesized and said the essential in a trenchant way, and supported Mr. Shearer's approach. She did think, however, that there was perhaps too much insistence on what States might not accept — as for instance in paragraph 14; the focus should be strictly on what States must accept. The difficulty lay in properly characterizing the authoritativeness of the Optional Protocol and in demonstrating the force of the Committee's judgements by situating them somewhere between simple advisory opinions and binding judgements such as those of the European Court of Human Rights. The general comment should show that, while the Committee's Views on communications did not have the binding force of *res judicata*, they did have the force of a finding.

7. **Mr. Pérez Sánchez-Cerro** said that an important consideration that directly affected State party obligations was the fact that the Spanish version of article 5, paragraph 2 (a), of the Optional Protocol differed radically from the English and French texts: the Spanish text barred the Committee from considering a communication if the same matter had been examined in the past by another international investigatory body, whereas the English and French texts referred to cases that were being examined by another such body. The Committee had seemed generally to be guided by the English and French versions, but the difference was crucial and should be clarified, for it was very misleading to Spanish-speaking States parties, who acted according to the Spanish text.

8. **The Chairperson** observed that the matter had been debated often in the past and had even been the subject of a reservation by Spain on the grounds of that article of the Optional Protocol. After a review of the *travaux préparatoires*, the Committee had in the past determined that the English and French texts were closer to the spirit of the Covenant and to the intention of the Optional Protocol and that the Spanish text was a mistranslation. However, since it was unthinkable that any text of the Covenant could be rewritten, the matter had to be dealt with by relying on the Committee's interpretation.

9. **Mr. O'Flaherty** said that he would find it interesting to know how Mr. Shearer had approached the drafting, from the conceptual point of view. Had he referred mainly to Committee practice or to the literature on the matter? He had some sympathy with Mr. Amor's position that the scope of the draft could be widened, and suggested possibly including aspects of the operation of the Optional Protocol such as issues of substantiation, abuse of the right of petition and requirements of admissibility. Perhaps the draft could also give a presentation of the Committee's procedures so that State parties had a contemporary overview without also having to consult rules of procedure or even unwritten practice. Lastly, he noted that the final

paragraph of the draft relied on the literature by expert commentators to buttress the authority of the Committee's Views, but he would prefer it if the Committee itself took the lead in upholding that view.

10. **Mr. Lallah** said that Mr. Shearer had done enormously impressive work. His own understanding, like Mr. Shearer's, was that the general comment should deal only with State party obligations under the Optional Protocol and should not extend to the operation of the Optional Protocol, on which there would be much to say. There was a very rich Committee jurisprudence on questions like admissibility, reservations, remedies, especially with regard to articles 5, 3 and 4 of the Protocol. Perhaps in the future another general comment could be written on admissibility questions under the Optional Protocol and on its operation. One could not do everything in one document.

11. He agreed with Mr. O'Flaherty's point that, since the Committee did not gather its practice from those who wrote about it, any citations should be to the Committee's own decisions rather than even to famous commentators. The Committee regarded itself as a quasi-judicial, permanent body and its jurisprudence as having that value. The general comment should not come across as professorial but instead as an authoritative document proceeding from the Committee itself.

12. **Ms. Chanet** observed that the draft general comment did not relate to an article of the Covenant, but more closely resembled the general comment on reservations. Mr. Shearer had been right in choosing one limited angle.

13. She wondered, however, whether it might not be appropriate to include two points in the text: reservations by States parties to the application of the Optional Protocol, which in essence were reservations to the Covenant itself; and also all the *ratione temporis* issues relating to the Covenant and the Optional Protocol. The Committee had abundant jurisprudence on both points and both would strengthen the claim that the Committee's findings were authoritative.

14. **Mr. Shearer** said that he had been guided throughout the drafting by the strong position that the true nature of State party obligations was to respect the Views of the Committee. That obligation of respect fell midway between being bound by the Views as a matter of law and simply regarding them as advisory.

15. He had not begun by distilling the secondary literature, but he had looked at the literature to see if there were contrary learned opinions to what he had written. All the footnotes in the text were therefore opinions supportive of the Committee's position.

16. As to Mr. Amor's and Mr. O'Flaherty's position that the draft general comment should go into how the Committee went about its work, he himself had given thumbnail sketches of that in paragraphs 5, 6 and 7, and especially paragraph 10, where the procedures were directly relevant to State party obligations. He was loathe to embark on any larger consideration of the matter and agreed with Mr. Lallah that another general comment could at some point deal with Committee procedures.

17. He would leave it to his colleagues to decide if the specific topics suggested by Mr. O'Flaherty belonged in the text. He would bear in mind what Ms. Chanet had said about stressing the authority of the Committee's views, focusing more on what States parties should do, and being less discursive, when he revised the draft. He also agreed with her that State party reservations and *ratione temporis* issues did relate to State party obligations and would include those two points. Mr. Kälin's point was also relevant, and he asked him to submit wording for inclusion.

18. He endorsed what the Chairperson had said about the language controversy to which Mr. Pérez Sánchez-Cerro had alluded. The Committee had in the past grappled with the problem and given its position, and the draft general comment should not go into it.

19. It was true that paragraph 34 was a somewhat banal final paragraph and he hoped that Mr. O'Flaherty could suggest fresher wording. It was, however, a natural conclusion to what preceded, and perhaps the idea of respect could be emphasized.

20. **Mr. O'Flaherty** clarified that he was definitely not insisting on an enlargement of the draft general comment and would fully support a narrower focus.

21. **The Chairperson** invited the Committee to begin considering the draft general comment paragraph by paragraph.

Paragraph 2

22. **Ms. Chanet** said that the reference to the number of States parties to the Optional Protocol, "At present,

more than two-thirds ...", should be deleted, as it dated the general comment.

23. **Mr. Amor** pointed out that the French text of the third sentence incorrectly stated that article 8 of the Optional Protocol provided that States that had signed the Covenant could accede to the Optional Protocol by a separate act of ratification or accession. It should be reworded to make it clear that ratification of the Covenant was a precondition for accession to the Optional Protocol.

24. **The Chairperson** said that he objected to the wording of the first sentence in the Spanish text and suggested that there might be translation problems in both the Spanish and French versions.

25. **Ms. Chanet** said that the French text of the third sentence was misleading because it suggested that signing the Covenant made a country eligible to ratify the Optional Protocol. The paragraph should reflect the formulation of article 8 paragraph 2.

Paragraph 3

26. **Mr. O'Flaherty** said that he objected to the penultimate sentence, which did not reflect the function of the Optional Protocol as he understood it. The sentence should be reformulated to describe the Optional Protocol as a procedure whereby the Committee identified violations by a State party of the rights of individuals, not some generic oversight mechanism such as the reporting procedure.

27. **Ms. Chanet** suggested that the penultimate sentence should be deleted altogether.

28. **Mr. Lallah** said that the last sentence should be retained, and proposed that the idea under article 1 of the Optional Protocol should be incorporated in order to describe what was not, in effect, a procedure, but rather a substantive competence given to the Committee to consider communications.

29. **Mr. Amor**, endorsing Mr. Lallah's suggestion, proposed that the last sentence should also mention that the competence was in addition to the procedure established under article 41.

30. **Ms. Chanet** pointed out that article 41 was not mandatory and that a distinction must be made between it and article 40. She suggested that the final sentence should be reworded to reflect the fact that the competence of the Committee was in addition to the competence given to it for regular mandatory review of the comprehensive reports of States parties under article 40 and to the competence given to the Committee under article 41.

31. **Mr. Shearer** said he agreed with Ms. Chanet that the language in paragraph 2 regarding the number of States parties to the Optional Protocol dated the document. He suggested replacing the phrase "at present, more than two thirds" with "a substantial majority." He endorsed her suggestion of deleting the penultimate sentence of paragraph 3; that would meet Mr. O'Flaherty's concern that the Optional Protocol should be viewed not just as a procedure but also as a form of redress. He also planned to incorporate the suggestions to emphasize competence given to the Committee over procedure, made by Mr. Lallah, Mr. Amor and Ms. Chanet, in his next draft.

Paragraph 4

32. **Mr. Amor** said that the terms "communications", "individuals", "legal persons", "jurisdiction" and "criminal liability" should be further developed and defined more clearly.

33. **Mr. Kälin** said that he endorsed Mr. Amor's proposal, especially with regard to the need to define communications more clearly, as the United Nations regularly received many allegations of human rights violations and it was important to know whether a given communication was intended for the Committee and required a response from a State party. Although the scope of jurisdiction of the Optional Protocol was an important issue that should be addressed in a general comment, he favoured a narrow approach to the text. He agreed that issues of procedure should be dealt with in a separate general comment that would cover the rights and obligations of authors of communications.

34. **Ms. Chanet** suggested that the Rapporteur should refer to the Committee's definitions of individuals and legal persons in the communication (CCPR/C/36/D/361/1989) received by it concerning Trinidad and Tobago. Similarly, the Committee's discussion of jurisdiction in a communication (CCPR/C/73/D/925/2000) brought against Portugal by a resident of Macao, could be helpful.

35. **Mr. Shearer** said that he was not opposed to developing certain points further, but the draft was deliberately brief, and he wished to keep it concise. He

had taken Mr. Amor's and Mr. Kälin's comments into consideration and agreed that it was necessary to define what an acceptable communication was, perhaps in a separate short paragraph, in order to avoid forwarding to States parties communications that did not meet certain criteria. He acknowledged the Committee's obligation to States parties to make such a determination.

36. **Mr. O'Flaherty** said that he preferred a longer and more authoritative text overall, as the general comment was a solemn statement on a very important topic.

Paragraph 5

37. **Mr. O'Flaherty** proposed a more specific formulation, such as "directly prejudiced", to refer to the requirement that claimants of human rights violations must fulfil in the second sentence, which said they must be "directly affected" by the violation. He pointed out that the term "an abstract violation" in the third sentence was not clear enough, and proposed replacing it with "a violation of the Covenant in the absence of an identifiable or otherwise specific victim." Furthermore, he suggested that the example, "such as the claim of structural flaws in the State party's legal system" should be deleted; he could conceive of a case where a structural flaw triggered a direct victimization. It might be helpful to make reference to the Tunan case, in which fear engendered by the existence of a law not being applied constituted the victimization. It might further be useful to add a sentence that victims could be represented by counsel.

38. **Mr. Amor**, referring to the French text, suggested that the word "et" in the fifth line, which read "de vices structurels dans le système juridique de l'État partie et ayant le caractère d'une *actio popularis*" should be changed to "ou". He called for specific definitions of the concept of a victim, the doctrine of *actio popularis* and the issue of victims unable to personally submit communications. Examples of the latter two from the Committee's legal precedents should be provided.

39. **Mr. Kälin** said that the Committee would have to opt for either a broad or a narrow focus in the general comment. Mr. O'Flaherty and Mr. Amor had made proposals that favoured a broad general comment dealing with procedure and admissibility of communications. Going into detail on issues such as the definition of a victim would require an extended general comment and fundamentally change the character of the text. He felt that paragraph 5 should deal with the scope of application of the Optional Protocol. The text should focus on the perspective of the State party rather than that of the author of the communication.

40. **Mr. Iwasawa** said that paragraphs 5 and 6 would have to be expanded if the Committee decided to explain procedure in detail. He suggested providing a footnote from case law for the last sentence, which mentioned the issue of representation by a friend or relative of the victim.

41. **Ms. Chanet** said that the general comment should cover the obligations of States parties and the scope of application of the Optional Protocol, not procedure.

42. **Mr. O'Flaherty** said that, if the Committee were to favour a narrow focus in the general comment, then the Rapporteur would have to further abridge the current text. He expressed the hope that the Rapporteur would be able to come up with general language that clearly spelled out what needed to be said as a chapeau for the specific topic.

43. **Mr. Amor** said that it was difficult to adequately discuss the obligations of States parties and the scope of application of the Optional Protocol in a general comment without addressing some procedural issues. However, if the Committee decided to focus strictly on State obligations and scope of application, it would have to devote one of the general comments, perhaps the next one, on procedural issues.

44. **Ms. Chanet**, responding to Mr. Amor's comment, said that procedural issues were dealt with in the rules of procedure, not in a general comment. However, she conceded that despite the limited focus on the obligations of States parties and the scope of application of the Optional Protocol, the general comment might give the Committee an opportunity to clarify and better define certain procedural issues and thereby improve upon and address shortcomings in the current rules of procedure.

45. **Sir Nigel Rodley** urged the Committee to decide on an approach to the general comment, in order to avoid further disagreements over whether the general comment should focus strictly on the obligations of States parties and the scope of application of the

Optional Protocol. While he favoured focusing on States parties' obligations, he understood those colleagues who preferred a more general approach.

46. **The Chairperson** said he thought that even if it was decided to limit the draft document to a general treatment of States parties' obligations, it would have to address the issue of inadmissibility. Specifically, in the context of articles 2, 3 and 4 of the Optional Protocol, the Committee would need to find a solid legal basis for its practice of declaring certain unsubstantiated communications inadmissible and, for that reason, not forwarding them to the State party concerned. He believed that it would be possible to respond to the questions that had been raised regarding the Committee's conduct in such matters without touching on issues relating to its rules of procedure. It might be argued that the Committee's jurisprudence had evolved over time and that the practice of interpreting an author's failure to substantiate a communication as grounds for ruling it inadmissible was a necessary development, even if it was not specifically authorized in the Optional Protocol; in that case, the draft general comment would be a way of carrying that interpretation forward and making it more convincing.

47. **Mr. Shearer** said he agreed with Sir Nigel Rodley that the scope of the draft document must be clarified. He therefore suggested that paragraphs 3 through 8 should be deleted; he had included them for the benefit of members of the general public who might consult the general comment once it was posted on the Committee's website, but he had not anticipated the many questions that they had raised.

48. **Mr. Amor** cautioned against leaving only the "skeleton" of the draft document; it was important to define certain terms and to consider whether Member States had obligations under the Optional Protocol other than those owed to the Committee.

49. **Mr. Iwasawa** said that while he sympathized with Sir Nigel Rodley's concerns and agreed that paragraphs 5 and 6 were especially problematic, he thought that it would be premature to take a decision on scope until the Committee had completed its first reading of the draft document.

50. **Mr. Källin** pointed out that article 1 of the Optional Protocol referred specifically to individuals who claimed to be victims of a violation of any of the rights set forth in the Covenant. Thus, while paragraphs 4 through 8 could be abridged, he agreed with Mr. Amor that they could not be deleted entirely. However, he saw no need to mention the victim's relatives since that issue was not crucial to establishment of the scope of application of article 1.

51. **Mr. O'Flaherty** said that he found the discussion of the scope of the draft general comment quite useful. He agreed with Mr. Iwasawa that no decision on the matter should be taken during the first reading. Paragraphs 3 through 8 should not be deleted entirely, but they could be reduced to a single paragraph by shortening or deleting paragraph 5, since the issue of victims was raised in paragraph 4, and reducing paragraph 6 to a single sentence to the effect that domestic remedies must be exhausted before a communication could be submitted.

52. **The Chairperson** said that in his view, Sir Nigel Rodley had been right in stating that the Committee needed a general idea of the scope of the draft; however, there was no need to take a final decision on the issue at the current meeting.

53. **Mr. Bhagwati** said that he, too, agreed with Sir Nigel Rodley that the Committee should not venture into areas that could be addressed on another occasion.

54. **Mr. Glélé Ahanhanzo** said that he would prefer to retain paragraphs 4 through 6. The last sentence of paragraph 5 raised a question of international law; the Committee should consider allowing submissions by a non-governmental organization (NGO) acting as amicus curiae, particularly where it did not have much information about the issues raised in the complaint.

55. **Ms. Majodina** stated that she associated herself with the members who wanted to clarify the scope, set forth the procedural issues involved and explain what was meant by the terms "communication" and "victim", particularly as the final document would be posted on the Committee's website.

56. **Mr. Lallah** stressed that the draft general comment should mention articles 2 and 3 of the Optional Protocol in the first eight paragraphs of the draft document since article 4 was discussed in paragraph 9. Paragraph 5 should be put into perspective by focusing on who was entitled to submit a communication; the topic of representation of the victim by another party should not be included, although the amicus curiae issue raised by Mr. Glélé

Ahanhanzo was an important one. The Committee had extensive jurisprudence on communications submitted by victims; perhaps the Rapporteur could formulate the issue more narrowly, leaving it for members to suggest amendments on second reading.

57. He would prefer not to delete paragraphs 4 through 9; the draft document would certainly need to mention article 1 of the Optional Protocol, which was the basis of States parties' obligations thereunder, and consideration should be given to including the paragraphs that dealt with articles 2 and 3 of the Optional Protocol as well.

58. **The Chairperson** suggested that the Committee should move through the draft document more quickly, exchanging views on its scope without making any amendments to it on first reading.

59. **Mr. Shearer** said that he could rephrase paragraphs 1 to 7 in a manner that would focus more closely on the text of the Optional Protocol, as Mr. Kälin had suggested, for further discussion at the next session of the Committee. Members could then suggest new language where they felt that more needed to be said. He proposed that the Committee should move on to the more substantive portion of the draft, beginning with paragraph 9.

The meeting was suspended at 4.52 p.m. and resumed at 5.15 p.m.

Paragraph 10

60. **Mr. Amor** suggested that a reference to interim measures should be included in the paragraph.

61. **Mr. Kälin** suggested that the paragraph should state that if a State party maintained that domestic remedies had not been exhausted, it must provide more information on the matter.

62. **Mr. Shearer** pointed out that the issue of interim or provisional measures was raised in paragraphs 25 to 28. As Mr. Kälin had noted, States often failed to list the domestic remedies that the author of a communication had failed to exhaust. In paragraph 10, he had meant to show that States did themselves a disservice by failing to respond to a communication or responding inadequately. Perhaps language to the effect that the Committee normally accepted an author's statement that domestic remedies had been exhausted unless the State showed otherwise should be included.

Paragraph 12

63. **Mr. Amor** said that the wording of paragraph 12 should be more precise. To that end, the phrase "is not that of a judicial body" at the end of the first sentence should be changed to read "is not fully a judicial body". The rest of the paragraph should be deleted and replaced with the phrase: "It sets forth views based on law".

64. **Mr. Kälin** said that the phrase "to the usefulness of the participation of some persons having legal experience" at the end of the paragraph was outdated and did not reflect the Committee's present composition.

65. **Mr. Shearer** said that he accepted Mr. Amor's suggestion and agreed with Mr. Kälin that the last sentence should be deleted.

66. **Mr. O'Flaherty** proposed retaining the last sentence of the paragraph because it reinforced the intention of the drafters of the Optional Protocol. In order to take into account Mr. Kälin's observation, he proposed adding the words "albeit, as a matter of practice, the preponderance of members do tend to be lawyers" to the end of the sentence.

Paragraph 13

67. **The Chairperson** said that, although the Spanish text of paragraph 13 accurately stated that the term used in article 5, paragraph 4, of the Optional Protocol to describe the decisions of the Committee was "*observaciones*", the term that should be used was "*dictamen*". The widespread use of the former had generated considerable confusion. The Committee had compounded matters by referring to the general comments as "*observaciones generales*" instead of "*comentarios generales*". In order to avoid further confusion, the Committee should use "*dictamen*" in the Concluding Observations, even at the risk of going against the language of the Optional Protocol.

68. **Mr. O'Flaherty** said that the use of the word "views" was clear. Therefore, in keeping with the Committee's practice, it was not necessary to refer to a secondary source of interpretation, such as the *travaux préparatoires* of the Optional Protocol when dealing with an issue that was easy to understand. There was also no need for the Committee to justify its opinion by referring to "the majority of commentators" when, in fact, it was the Committee that was speaking. Thus, the

second sentence might read: "The Committee is of the view that these words do not disclose any intention by States to make the decisions of the Human Rights Committee binding, a view supported by the *travaux préparatoires* and the opinion of commentators".

69. **Mr. Amor** said that paragraph 13 should be deleted because of its problematic wording and because its second sentence considerably weakened the Committee's perception of the importance of the Optional Protocol. Perhaps it would be sufficient to add "it sets forth certain views ['constatations', 'observaciones'] based on law" to paragraph 12, if the other members wished to retain that idea from the first sentence.

70. **Mr. Lallah** said that he agreed with Mr. Amor regarding paragraph 13. If the members wished to retain the last sentence, it could be incorporated into paragraph 12, but without the reference to "commentators". Also, the word "binding" could be replaced with "executory".

71. **Mr. Glélé Ahanhanzo** said that he, too, supported Mr. Amor's proposal. However, he was uncertain about the use of "executory" because Committee members interpreted that word differently. Moreover, because of the commitment by States to abide by all decisions of the Committee, it was not possible to say that those decisions were not binding.

72. **Mr. Shearer** said that rewording the second sentence along the lines proposed by Mr. O'Flaherty should remove all objections. Although the ideas in the paragraph could be incorporated into paragraph 12, they should not be deleted completely, since they served as a preamble to paragraph 14. He did not support the proposal to substitute "executory" for "binding"; the Committee was addressing a broad audience and should avoid using terms that were not widely understood.

73. **Sir Nigel Rodley** said that paragraph 13 could easily be omitted inasmuch as the Committee, in the first sentence of paragraph 14, suggested that its views were not binding. Perhaps the words "per se" or "ipso jure" could be added before "binding" in order to convey that meaning. The paragraphs that followed gave an indication of the authority the Committee's findings had under the Optional Protocol.

Paragraph 14

74. **Mr. Amor** said that the first sentence and part of the second sentence should be deleted. The amended second sentence would read: "Having regard to the place and function of the Optional Protocol in the system of standard-setting and monitoring of obligations established by the International Covenant on Civil and Political Rights, the views of the Committee have juridical effect".

75. **Mr. Shearer** said that he had taken note of the proposal and would place the wording in square brackets for consideration at the July 2008 session of the Committee. However, he favoured retaining the paragraph in its current form precisely because many States and commentators had said that the views of the Committee were merely advisory. Those assertions were incorrect and the Committee ought to answer them directly. Moreover, subsequent paragraphs in the comments expounded on why those views were more than just recommendations. The use of vague words, such as "juridical effect", would only serve to encourage the dismissive attitude that some had taken towards the Committee's views.

76. **The Chairperson** said he agreed that the first sentence should be deleted. Perhaps the paragraph could begin with the words "The Committee's views are not purely advisory or recommendatory", followed by wording that reflected the Rapporteur's position.

Paragraph 15

77. **Mr. O'Flaherty** said that the paragraph, as it stood, gave the impression that the views of the Committee under the Optional Protocol served a function similar to its Concluding Observations under article 40 of the Covenant. The fact of the matter was that much of the Concluding Observations was merely advice on the policy options available to States in relation to the implementation of their obligations.

78. Although it was true that those Observations sometimes contained authoritative statements of legal principles, it was not accurate to equate the overall function of the Observations with that of the views of the Committee. If members wished to retain the basic ideas of the paragraph, he suggested replacing the words "authoritative statements of legal principles" with "authoritative interpretations of the Covenant".

79. **Mr. Lallah** said that, inasmuch as the functions of the Committee under article 40 were completely different from its quasi-judicial role under the Optional Protocol, it would be safer not to make any references to the article. What was important was to demonstrate the authoritative character of the Committee's interpretation of the Covenant.

80. **Mr. Amor** said that he supported the call to delete all references to article 40.

81. **Mr. Shearer** said that he agreed with the proposed amendments. The words "like its Concluding Observations on the reports of States parties under article 40 of the Covenant" would be deleted, and the words "statements of legal principles" would be replaced with "interpretations of the Covenant".

82. **Mr. Bhagwati** drew attention to the phrase "mandate given to the Committee under the Covenant" in the first sentence. Given that the sentence spoke of the views of the Committee under the Optional Protocol, perhaps the phrase in question should also speak of the Optional Protocol.

83. **Mr. Lallah** said that the phrase should refer to both the Covenant and the Optional Protocol because the Committee gave its views on rights under the Covenant pursuant to its mandate under the Optional Protocol. In addition, he understood that the last phrase of the paragraph — "by reason of the integral role" — was to be deleted.

84. **Mr. Shearer** said he agreed that there should be a reference to both the Covenant and the Optional Protocol in the first sentence. However, he wished to retain the last phrase of the paragraph because the "integral role of the Committee under both instruments" was a reference to the organic link between the Covenant and the Optional Protocol contained in paragraph 2. It was meant to reinforce the notion that the respect States ought to pay to the views expressed by the Committee in individual cases under the Optional Protocol should not be based on the Optional Protocol alone, but also on the fact that the Committee was interpreting the meaning of the various rights contained in the Covenant.

85. **The Chairperson** suggested that paragraph 15 should be set aside and taken up again during the second reading.

Paragraph 16

86. **Ms. Majodina** said that the wording of the last sentence of the paragraph was too complex for the general public and wondered whether it could be simplified.

87. **Mr. Shearer** agreed with Ms. Majodina's observation. Since exhaustion of remedies was addressed in paragraph 6, the sentence could be simplified by deleting the phrase "after the failure of the State's organs to do so prior to the satisfaction by the author of the rule of exhaustion of domestic remedies".

Paragraph 18

88. **Mr. Amor** said that the words "of persuasive force" should be deleted from the end of the paragraph and replaced with "having the effect of law".

89. **Mr. Shearer** said that he favoured retaining the expression "persuasive force" because many national courts and commentators had used the word "persuasive" in reference to the Committee's views. The expression was intended to support the Committee's assertion that its views, while not binding, should be respected. Yet to say that those views had the effect of law was, in his view, tantamount to saying that they were binding.

90. **Sir Nigel Rodley** said that it was best to avoid the issue entirely by deleting the words "and as of persuasive force".

91. **Mr. Shearer** said that he accepted Sir Nigel's proposal.

92. **Mr. Lallah** proposed adding the words "and the Optional Protocol" after "under the Covenant".

93. **Mr. Shearer** said that he accepted the proposal.

The meeting rose at 6.00 p.m.

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Summary record of the 2533rd meeting
Held at Headquarters, New York, on Wednesday, 2 April 2008, at 11 a.m.

Chairperson: Mr. Rivas Posada
later: Mr. Khalil

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Progress report of the Special Rapporteur for follow-up on concluding observations

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This record is subject to correction.

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Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

08-29541 (E)

The meeting was called to order at 11.15 a.m.

Follow-up to concluding observations on State reports and to Views under the Optional Protocol

Progress report of the Special Rapporteur for follow-up on concluding observations

1. **Sir Nigel Rodley** (Special Rapporteur for follow-up on concluding observations), introducing an updated English version of his earlier report (CCPR/C/92/R.1) tracking the changes made in the light of developments since its publication, said that he had consulted with representatives of the Central African Republic, Mali, Namibia, Sri Lanka and Suriname and would soon be meeting with representatives of the Democratic Republic of the Congo. Regrettably, it had not been possible to meet with representatives of the Gambia and Namibia, which had not been forthcoming in making the necessary arrangements.

2. The Special Rapporteur's role was to urge States to provide prompt feedback on the points raised by the Committee in its concluding observations. Such efforts were counter-productive, however, if requests for information were made year after year and a subsequent periodic report of the State party was due or overdue. In those cases, the State party should be encouraged to submit a report rather than respond to concerns paragraph by paragraph. Nevertheless, failing the submission of a report, a response to the individual paragraphs would be better than nothing.

3. He hoped that the updated version of his report could be reformatted to make it more reader-friendly. Concerning overdue responses to concluding observations, he recommended, with respect to Moldova and Uzbekistan, that no further action should be taken in view of the States parties' submission of periodic reports.

4. **Ms. Chanet**, proposing that there should be a separate page devoted to each State party for the sake of readability, said that the Committee should also consider at a later date revising its working methods for follow-up, as suggested by Sir Nigel Rodley. All the concluding observations relating to a State party should be given equal consideration. The follow-up process was often hindered by the difficulty encountered by States parties in consulting with the various departments able to answer precise questions regarding specific concerns.

5. **Mr. Amor** said he agreed that the Committee should consider revising its working methods. Singling out specific paragraphs in the concluding observations meant emphasizing some priorities at the expense of others. Follow-up to the concluding observations should therefore address the observations as a whole.

6. **Mr. Lallah** said that the Committee's attempt to establish priorities as between concluding observations in order to ease the reporting burden and produce more focused reports had been misguided. He therefore welcomed the proposal to review its working methods. The Committee's main objective was to ensure that all the rights under the Covenant were given due attention. He therefore suggested using clear headings for the questions to States parties to encourage them to submit timely and detailed reports.

7. **Mr. O'Flaherty** said that there was a need for the Committee to set priorities. Just as there were issues which deserved varying degrees of attention, there were concluding observations of varying importance. There were many ways of indicating priorities, including using language in the conclusions to express various levels of concern, but expressions such as "extremely concerned" could often be arbitrary or capricious and were best avoided. The current working method was deficient, however. He therefore suggested that the Committee should consider others, such as arranging the concluding observations according to what it perceived to be the principal issues rather than in a manner reflecting the order of the articles of the Covenant. Nevertheless, a decision on the matter should be deferred to a later date, when the Committee considered its working methods.

8. **The Chairperson** said that the Committee would return to the issue as a matter of urgency when it took up discussion of its working methods.

9. **Mr. Shearer** said that it was unclear whether Moldova had submitted a combined second and third periodic report, as it had requested. If not, he enquired whether it was late in submitting its third periodic report.

10. **Sir Nigel Rodley** said he believed that the report submitted was up to date, regardless of whether it was called the second periodic report or combined second and third periodic reports. The Committee should be sure, however, to base its recommended actions on the term used by the State party.

11. With respect to the recommended action for the Gambia, he emphasized the unprecedented, strong wording used. It had failed to send a representative to meet with the Committee when the Committee had considered the situation in the absence of a report in 2002. All subsequent efforts to encourage the Gambia to submit a report or to respond to requests for a meeting with a representative of the State party, including during the current session, had been fruitless. Given that it had a Permanent Mission in New York, the State party had missed an opportunity to cooperate with the Committee. He therefore suggested that the State party should be notified of the Committee's intention to declare it in breach of its obligation to cooperate with the Committee under part IV of the Covenant.

12. **Mr. Shearer** recalled that the Committee had been awaiting a delegation from the Gambia in Geneva in 2002 to consider the situation in the absence of a report when the State party had first announced that the delegation had been delayed in the Gambia and subsequently cancelled the visit. He would support the recommended action, as the case was an exceptional one of non-cooperation with the Committee. He assumed that the recommendation would be included in the Committee's forthcoming annual report. The State party should be informed of that step in advance and advised that it would be the first occasion on which the Committee had ever used such terminology or highlighted the failure of a State party to cooperate with it in its annual report.

13. **Mr. Lallah** enquired whether the Committee should specify which articles of the Covenant it was addressing, as part IV comprised various articles.

14. **Sir Nigel Rodley** said that the recommended action referred to article 40. It would have less impact if the Committee were to declare the State party to be in violation of that provision alone rather than of part IV, which was the section of the Covenant that established the Committee in general and set forth its functions.

15. **Mr. Amor**, concurring with the proposals by Sir Nigel Rodley and Mr. Shearer, said that the Committee's annual reports were not widely read. He therefore suggested that it should also issue a press release if the State party's non-compliance with its obligations continued.

16. **Mr. Iwasawa** and **Mr. Bhagwati** said that the State party should be reminded of the importance of responding to the Committee by the ninety-third session.

17. **Mr. O'Flaherty** said that he could support the proposals made by Sir Nigel Rodley and Mr. Amor.

18. **Ms. Wedgwood** said that, in view of the blatant failure of the Gambia to cooperate with the Committee, a press release would be in order.

19. **Mr. Lallah** said that the Committee should first warn the State party that it was thinking of issuing a press release. As for the recommended action, it would be preferable to say that the State party was "in breach of its obligation to cooperate with the Committee in the performance of its functions under part IV of the Covenant", rather than simply "in breach of its obligation to cooperate with the Committee under part IV of the Covenant".

20. *Mr. Khalil (Vice-Chairperson) took the Chair.*

21. **Sir Nigel Rodley** accepted Mr. Lallah's proposal to amend the wording of the recommended action. With regard to the question of a press release, the State party could be contacted informally in that regard, but allowed a further opportunity to respond before the ninety-third session. The Committee should not give the impression that it was taking its own functions more seriously than the human rights situation on the ground.

22. **The Chairperson** said he took it that the Committee agreed that it would, if necessary, reconsider the question of a press release at a later stage.

23. **Sir Nigel Rodley,** turning to the concluding observations on Mali, pointed out that alternative recommended actions were proposed, but in the document under consideration; however, in the light of the consultations held with the State party during the current session, he suggested that action should be limited to a further reminder. The same option should be recommended for Sri Lanka, notwithstanding the omission of any wording to that effect from his report.

24. With regard to Equatorial Guinea, he had contemplated the same form of words as for the Gambia in his recommendation. However, a meeting had taken place with the State party in October 2007, when it had promised to submit a report by

31 December of that year. Since it still had not done so, a further reminder should be sent.

25. **Ms. Majodina** expressed particular concern about the human rights situation in Equatorial Guinea, where a number of South African missionaries had been arrested and where the death penalty was still in force. She welcomed the possibility open to the Committee of examining country situations without having received a report and wondered whether such action might be envisaged once again in the case of that State party.

26. **Sir Nigel Rodley** said that rule 70 of the Committee's rules of procedure did indeed offer that possibility, of which the Committee had availed itself for Equatorial Guinea in October 2003. As a response was still expected from the State party, the Committee might prefer to wait before deciding to hold further hearings under that rule. It should also be borne in mind that the Committee had a considerable backlog of situations for consideration in the absence of a report.

27. **Mr. Lallah** wondered whether the secretariat of the Committee might not, as in the case of the Gambia, contact the State party informally.

28. **Sir Nigel Rodley** proposed that, since the State party's initial report had still not been submitted, even though it had sent a delegation to the October 2003 meeting, Equatorial Guinea should be informed that it would be in breach of its obligation to cooperate with the Committee if it did not submit a report by the Committee's ninety-third session.

29. With regard to Yemen, Brazil and Paraguay, the recommended action should not be, as indicated in his report, to review the status of submission of follow-up replies, but to send reminders to those States parties, with a view to receiving follow-up replies by the ninety-third session.

30. In the case of the Democratic Republic of the Congo, since consultations were scheduled for the following day, the recommended action should be that the results of those consultations should be reported to the Committee at its ninety-third session.

31. **Mr. O'Flaherty** wondered whether any action had been taken on the earlier suggestion that a follow-up on the question of Kosovo might be arranged with the relevant officials in New York.

32. **Sir Nigel Rodley** said that such a meeting had been requested and that a communication had been received in that connection from the United Nations Mission in Kosovo which, unfortunately, he had not been able to study in time for the current session.

33. *The recommendations contained in the progress report of the Special Rapporteur for follow-up on concluding observations, as amended, were approved.*

The meeting was suspended at 12.30 p.m. and resumed at 12.35 p.m.

Progress report of the Special Rapporteur for follow-up on Views (CCPR/C/92/R.5)

34 **Mr. Shearer** (Special Rapporteur for follow-up on Views) introduced his progress report (CCPR/C/92/R.5), which compiled information received since the ninety-first session of the Committee.

35. He noted, in the case of *Medjnoune v. Algeria* (Communication No. 1297/2004), that the author had in fact ended his hunger strike after receiving the visit of the procureur général, but was still awaiting a date to be set for his hearing.

36. With regard to the case of *Sankara et al. v. Burkina Faso* (Communication No. 1159/2003), he suggested that the Committee find the State party's remedy satisfactory and discontinue consideration of the matter under the follow-up procedure.

37. **Ms. Chanet**, referring to the case of *Gorji-Ginka Fongum v. Cameroon* (Communication No. 1134/2002), said that the second sentence of the section referring to the author's response was out of place and suggested that it should be deleted.

38. **Mr. Shearer** said he agreed with Ms. Chanet's proposed change.

39. Turning to the case of *C. v. Colombia* (Communication No. 1361/2005), he suggested inserting a hyphen in the word "resent", appearing in the last sentence of the first paragraph of the section on the State party's response, for clarity's sake.

40. **Mr. O'Flaherty**, referring to the case of *K.N.L.H. v. Peru* (Communication No. 1153/2003), said the fact that the State party had dealt with the specific complaint of the author and had provided compensation as a remedy should be considered sufficient. It was not, nor should it be, the Committee's

policy to demand systemic changes in the context of communications.

41. **Mr. Shearer** said he agreed with Mr. O'Flaherty and suggested that the Committee should consider the dialogue closed, with no further action required by the State party.

42. *The recommendations contained in the progress report of the Special Rapporteur for follow-up on Views, as amended, were approved.*

The meeting rose at 1.05 p.m.